

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Anne Cushman Schwaikert, et al, Woodbury

File No. 2011-005

FINDINGS AND CONCLUSIONS

The Complainants, Anne Cushman Schwaikert and Beverly L. Deickler, respectively the Democratic and Republican Registrars of Voters in the Town of Woodbury, brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged that Respondent Manolis Sfinarolakis was not a bona fide resident in Woodbury when he cast a ballot there on Election Day November 2, 2010 in violation of General Statutes §§ 9-7b (a)(2)(C), 9-42 & 9-172.

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. Complainants here allege that on Election Day, November 2, 2010, the Respondent had been moved to the "inactive" voter list pursuant to General Statutes § 9-35 because the Complainants had received a notice in January 2010 through the National Change of Address system that he had moved out of town.
2. When the Respondent presented himself to vote at his polling place in Monroe on November 2, 2010, he was restored to the active registry list and voted after swearing to and submitting a "Restoration of Voter" form pursuant to General Statutes § 9-42.
3. After the aforementioned events, the Respondents allege that they reviewed information about the Respondent from their files that they believe supports a finding that at the time the Respondent cast his ballot, he was not a bona fide resident at his registered address in Woodbury, but had moved to New Britain. According to the Complainants, they had sent a letter to the Respondent at the Woodbury address informing him that he had been moved to the inactive list, but the letter was returned with a notation that his new address was in New Britain.
4. The Respondent does not generally deny the Complainants' allegation, but asserts that the voting address in Woodbury is his parents' home, his childhood address and the only address that he had ever used as a voter. The investigation revealed that the Respondent purchased a property in New Britain in 2009. It did not occur to the Respondent at the time that he would need to change his voting address. Further, he admits that when he showed up to vote on the date in question and was asked to sign the "Restoration of Voter" form, he did not read the instructions on the form, including but not limited to the instructions regarding swearing that he was a bona fide resident of the town.
5. Turning to the question of the Respondent's eligibility as a voter in Woodbury, an elector is eligible to vote in a particular town only if such voter is a bona fide resident of such town. General Statutes § 9-12, provides in pertinent part:

(a) Each citizen of the United States who has attained the age of eighteen years, and who is a bona fide resident of the town to which the citizen applies for admission as an elector shall, on approval by the registrars of voters or town clerk of the town of residence of such citizen, as prescribed by law, be an elector, except as provided in subsection (b) of this section. . . . (Emphasis added.)[Emphasis added.]

6. General Statutes § 9-172, provides in pertinent part:

At any regular or special state election any person may vote who was registered on the last-completed revised registry list of the town in which he offers to vote, and he shall vote in the district in which he was so registered; provided those persons may vote whose names are restored to the list under the provisions of section 9-42 or whose names are added on the last weekday before a regular election under the provisions of section 9-17. Each person so registered shall be permitted to vote if he is a bona fide resident of the town and political subdivision holding the election and has not lost his right by conviction of a disfranchising crime. Any person offering so to vote and being challenged as to his identity or residence shall, before he votes, prove his identity with the person on whose name he offers to vote or his bona fide residence in the town and political subdivision holding the election, as the case may be, by the testimony, under oath, of at least one other elector or by such other evidence as is acceptable to the moderator. [Emphasis added.]

7. If a registered voter's name appears on the inactive list, such voter may be restored to active status and cast a ballot if such voter affirms that s/he is a bona fide resident of the address to which such voter seeks restoration. General Statutes § 9-42 reads, in pertinent part:

(c) The registrars of voters shall cause the inactive registry list compiled under section 9-35 to be completed and printed and deposited in the town clerk's office and shall provide a sufficient number of copies for use in the polling place on election day. If on election day the name of an elector appears on such inactive registry list, including the name of an elector who has not responded to a confirmation of voting residence notice under subsection (e) of section 9-35 and has not voted in two consecutive federal elections, such name shall be added to the active registry list upon written affirmation signed by the elector, under penalties of false statement, before an election official at the polling place, that *such elector*

is still a bona fide resident of such town, and upon the consent of both registrars or assistant registrars, as the case may be, in the polls.

(d) The name of no elector shall be added to the active registry list under the provisions of this section, unless his name or some name intended for his name was on the active registry list for at least one of the four years previous or on one of the preliminary active registry lists for the year in which the registrars are in session. [Emphasis added.]

8. Any person who votes in any election when not qualified to do so, faces both civil and criminal liability. General Statutes § 9-7b, provides in pertinent part:

(a) The State Elections Enforcement Commission shall have the following duties and powers:

...

(2) To levy a civil penalty not to exceed . . . (C) two thousand dollars per offense against any person the commission finds to have (i) improperly voted in any election, primary or referendum, and (ii) not been legally qualified to vote in such election, primary or referendum, . . . [Emphasis added.]

9. General Statutes § 9-358, provides in pertinent part:

Any person who, upon oath or affirmation, legally administered, wilfully and corruptly testifies or affirms, before any registrar of voters, any moderator of any election, primary or referendum, any board for admission of electors or the State Elections Enforcement Commission, falsely, to any material fact concerning the identity, age, residence or other qualifications of any person whose right to be registered or admitted as an elector or to vote at any election, primary or referendum is being passed upon and decided, shall be guilty of a class D felony and shall be disfranchised. [Emphasis added.]

10. General Statutes § 9-360, provides in pertinent part:

Any person not legally qualified who fraudulently votes in any town meeting, primary, election or referendum in which the person is not qualified to vote, and any legally qualified person who, at such meeting, primary, election or referendum, fraudulently votes more than once at the same meeting, primary, election or referendum, shall be fined not less than three hundred dollars or more than five hundred dollars and shall be imprisoned not less than one

year or more than two years and shall be disfranchised. Any person who votes or attempts to vote at any election, primary, referendum or town meeting by assuming the name of another legally qualified person shall be guilty of a class D felony and shall be disfranchised. [Emphasis added.]

11. In order to establish liability in the present case, Respondent must not have been qualified to vote in Woodbury on November 2, 2010. As noted above, General Statutes § 9-12 sets forth elector qualifications. In the present case, no one contests that the Respondent was a citizen of the United States and had attained the age of eighteen years at the time he restored his registration and voted. Moreover, no allegation has been made, and no evidence has been found, that the Respondent voted, or tried to vote, in any other place on the date in question. As such, the question to answer here is only whether Respondent was a “bona fide resident” of Woodbury at the time.
12. According to the Commission, an individual’s bona fide residence is the place where that individual maintains a true, fixed, and principal home to which he or she, whenever transiently relocated, has a genuine intent to return. *See, e.g., Complaint of Gary Amato, North Haven*, File No. 2009-158 (2010); *Complaint of Cicero Booker, Waterbury*, File No. 2007-157. In other words, “bona fide residence” is generally synonymous with domicile. *Id.; cf. Hackett v. The City of New Haven*, 103 Conn. 157 (1925). The Commission has concluded, however, that “[t]he traditional rigid notion of ‘domicile’ has . . . given way somewhat but only to the extent that it has become an impractical standard for the purposes of determining voting residence (i.e., with respect to college students, the homeless, and individuals with multiple dwellings).” (Emphasis added.) *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047 (Emphasis added.). *See also Wit v. Berman*, 306 F.3d 1256, 1262 (2d Cir. 2002) (stating that under certain circumstances the domicile rule for voting residency can give rise to administrative difficulties which has led to a pragmatic application of that rule in New York); *Sims v. Vernon*, Superior Court, Fairfield County, No. 168024 (Dec. 22, 1977) (concluding that an absentee ballot of an individual should be counted as that individual was a bona fide resident of the town in which the ballot was cast.); *Farley v. Louzitis*, Superior Court, New London County, No. 41032 (Oct. 4, 1972) (considering issue of voter residency with respect to college students and stating that “a student, and a nonstudent as well, who satisfies the . . . residence requirement, may vote where he resides, without regard to the duration of his anticipated stay or the existence of another residence elsewhere. It is for him alone to say whether his voting interests at the residence he selects exceed his voting interests elsewhere.”) (Emphasis added.)
13. The Commission has previously concluded that “[a]n individual does not, therefore, have to intend to remain at a residence for an indefinite period for that residence to qualify as that individual’s bona fide residence. *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047. Rather, the individual only has to possess a present intention to remain at that residence. *Id.; see also Maksym v. Board of Election Com'rs of City of Chicago*, Illinois Supreme Court, Docket No. 111773 (January 27, 2011), 2011 WL 242421 at *8 (“[O]nce residency is established, the test is no longer physical presence but rather abandonment. Indeed, once a person has

established residence, he or she can be physically absent from that residence for months or even years without having abandoned it. . . .”)

14. As such, where an individual truly maintains two residences to which the individual has legitimate, significant, and continuing attachments, that individual can choose either one of those residences to be their bona fide residence for the purposes of election law so long as they possess the requisite intent. *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047; *see also Wit*, 306 F.3d at 1262 (quoting *People v. O’Hara*, 96 N.Y.2d 378, 385 (2001) for this principle.)
15. Thus, the initial issues in the present matter are whether: 1) the Respondent truly resided at the home in Woodbury on or before the date in question and 2) whether he had legitimate, significant, and continuing attachments to that home. If the above two questions can be answered in the affirmative, only the Respondent’s abandonment of the residence in Woodbury will extinguish his right as an elector in that town.
16. As with any bona fide residence inquiry, the answers to those questions turn entirely on the specific facts of this case.
17. Here, the Respondent does appear to have certain attachments to the property in Woodbury that mitigate in his favor. The Respondent submitted statements affirming that he maintains a very close attachment to his family and his childhood home. From 2006, he had lived on and off in two other places, in Stamford and Hartford, but moved back to the Woodbury property full time more than once in the five years preceding the events of this case. He asserts that he changed his primary address to New Britain in July 2009 and then again changed it to Hartford in February 2010, but then moved it back to Woodbury full time again in July 2010. Just before the events of this case he changed his address back to New Britain. Presently, he visits the Woodbury property often each week and stays over in a room that has been his since he was a child; according to the Respondent this room is still his and not a general guest room. He does not pack an overnight bag when he stays over in Woodbury as he maintains clothing and personal effects on the premises. He also maintains that it is his present intent to return to Woodbury full time at some point in the future, but he does not have specific plans.
18. Based on the statements and evidence presented by the parties in this matter, the Commission concludes first that the Respondent had a good faith claim to residence at the Woodbury property; he grew up and lived in the home full time until at least college. After college, the Respondent maintained a relatively itinerant lifestyle in the years preceding the events of this case; he had moved back into the Woodbury property on a full-time basis a number of times in the previous two years. Secondly, the Commission concludes that there is sufficient evidence that the Respondent continued to maintain legitimate, significant, and continuing attachments to that home even during periods where he had a greater residency interest in other places. Finally, the Commission concludes that there is insufficient evidence to support an allegation that the Respondent had abandoned his claim to residence at the Woodbury property at the time he presented himself to vote on November 2, 2010. As such, there is insufficient evidence to conclude that the Respondent had abandoned a claim to bona fide residence as an active elector in the town of Woodbury. Moreover, while it is certainly relevant evidence that he admits to occupying a home in New Britain at the

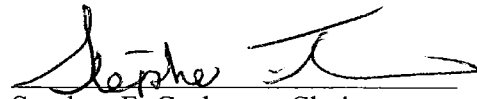
specific time the ballot was cast, this fact alone did not extinguish his claim to bona fide residence in Woodbury. Indeed, in the present matter, it serves only as evidence that the Respondent may have had a legitimate claim to bona fide residence in *both* New Britain *and* Woodbury—rather than one or the other—in which case he would have had the option of choosing. In this instance, he chose to continue casting his ballot in Woodbury.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the matter be dismissed.

Adopted this 13th day of April, 2011 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen F. Cashman", written over a horizontal line.

Stephen F. Cashman, Chairperson
By Order of the Commission